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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,898	12/09/2003	Michael R. Spencer	098719-100001	4701
34026	7590	10/09/2007		
JONES DAY 555 SOUTH FLOWER STREET FIFTIETH FLOOR LOS ANGELES, CA 90071			EXAMINER BLANKENSHIP, GREGORY A	
			ART UNIT	PAPER NUMBER
			3612	
			MAIL DATE	DELIVERY MODE
			10/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/731,898

Applicant(s)

SPENCER ET AL.

Examiner

Greg Blankenship

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 8/24/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27, 29, 30 and 32-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11, 12 and 16-18 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-15, 19-27, 29, 30 and 32-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/9/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14, 27, 30, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is not clearly understood because the limitation that the slat is shorter than the channel contradicts the limitation of claim 13 that the slat extends along substantially the entire length of the channel.

Claim 27 is not clearly understood because it is unclear how a plurality of elongated slats can be mounted within the channel when a slat is the length of the entire channel.

Claim 30 is not clearly understood because the limitation that the slats are shorter than the channels contradicts the limitations of claims 13 and 29 that the slats extend along substantially the entire length of the channels.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-8, 13-15, 21-27, 29, 30 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Downey (5,522,635).

Downey discloses a cover system for an open top truck box (14) with a front wall (24), a rear wall (16), and two side walls (20,22). The side walls have top edges, as shown in Figure 1. The system has a flexible cover material (26) with dimensions approximately the same as the dimensions of the open top (14) and an upwardly facing and downwardly facing surface. A first fastening means (96) is disposed along a portion of at least one side edge of the downwardly facing surface of the flexible cover material (26), as shown in Figures 1 and 5. A rail (36) is mounted adjacent the edge of the wall (22) and has an outwardly facing portion that defines an elongated channel portion (59), as shown in Figure 4. An elongated, substantially rigid second fastening means (74) is slideably retained within the channel (59), as disclosed on lines 39-41 of column 5. The second fastening means (74) has an integrally formed fastening surface (85) positioned to engage the first fastening means (96). The second fastening means (74) extends along substantially the entire length of the channel (59) and remains slideable along the longitudinal axis of the channel after the first fastening means (96) has engaged the second fastening means allowing the cover to move relative to the rail (36), as disclosed on lines 41-45 of column 5. In reference to claim 2, the two side walls (20,22) have top edges and two of the side edges have downwardly facing fastening means (96). A second rail (38) is mounted on the top edge of the other side wall (20). In reference to claims 4 and 21, the rails are made of extruded aluminum, as disclosed on lines 9-10 of column 5. In reference to claims 5 and 24, the side rails (36,38) have a mounting flange (58). In reference to claim 6, the side rails (36,38) are secured to the top edges by means of C-clamps (30), as shown in Figure 12. In reference to claims 8 and 23, the channel is configured in an inclined orientation, as shown in Figure 4. In reference to claim 13, the fastening surface (85) is capable of reversible attachment to the first fastening means (96)

Art Unit: 3612

integrated on a surface of the elongated, substantially rigid slat (74) and exposed through the channel, as shown in Figure 4. At least one stop (40,46) is attached to the rail (36) to limit the range the slat can slide longitudinally, as shown in Figures 2 and 8. In reference to claim 14, the stop limits the longitudinal movement of the slat so that the ends of the slat do not exit the channel. In reference to claim 15, the system includes a second end cap (40,46) detachably attached to an opposing end of the side rail (36). In reference to claim 22, the channel defined in the side rail is outwardly facing when the side rail is mounted on the side wall. In reference to claim 25, the mounting flange (58) is secured to the side wall by clamps (30), as shown in Figure 12. In reference to claim 26, the at least one stop (40,46) is detachable from the rail (36). In reference to claim 27, the cover system comprises a plurality of elongated slats (74) mounted within channels (59). In reference to claim 29, a second rail (38), a second elongated slat (74) and a second fastening surface (85) are disclosed as claimed. A stop (42,44) is attached to the second rail (38) to limit the range the second slat (74) can slide longitudinally. In reference to claim 35, the second fastening means is prevented from longitudinal escape from the channel by stops (40,46).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downey (5,522,635) in view of Byrd et al. (4,496,184).

Downey does not disclose the fasteners being hook and loop material.

Byrd et al. teach the use of hook and loop material (68,76) to connect a truck box cover (26) to a rail (72).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the fasteners of Downey with hook and loop fasteners such that, in reference to claim 19, the loop material is affixed to the flexible cover and the hook material is permanently affixed to the slats, and in reference to claim 20, the hook material is affixed to the flexible cover and the loop material is permanently affixed to the slats to provide a suitable fastener that won't be as difficult to undo when subjected to freezing rain.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downey (5,522,635) in view of Byrd et al. (4,496,184).

Downey does not disclose the channel extending substantially vertically.

Byrd et al. teach a connection surface between a cover (26) and a rail (72) that is substantially vertical, as shown in Figure 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the channel of Downey such that it extends substantially vertically to improve the connection between the rail and the flexible cover by increasing the resistance of the connection to disconnections caused by cargo bouncing up into the flexible cover.

8. Claims 10, 14, 30, 32-34, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downey (5,522,635).

Downey does not disclose the claimed amount of play.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the slats of Downey slightly shorter than the channels of Downey resulting in

Art Unit: 3612

a play of equal to or greater than 3/16" and less than or equal to 1 1/2" to account for the different thermal expansion properties of the rail and the slats and reduce manufacturing costs by using manufacturing the rails and slats with larger tolerances.

9. Claims 36 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downey (5,522,635) in view of Schmeichel (5,906,407).

Downey does not disclose the adjustable tension control assembly.

Schmeichel teaches an adjustable tension control assembly (10) fixed in relation to the rails (14) and in operative relation to the front edge of the flexible cover material (12), as shown in Figures 2 and 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add an adjustable tension control assembly to the cover system of Downey such that the tension control assembly is fixed in relation to the rails of Downey and in operative relation to the front edge of the flexible cover of Downey, as taught by Schmeichel, to allow the user to obtain the desired amount of tightness when the flexible cover is placed in the closed position.

10. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Downey (5,522,635), as modified in reference to claim 10, in view of Schmeichel (5,906,407).

Downey, as modified, does not disclose the adjustable tension control assembly.

Schmeichel teaches an adjustable tension control assembly (10) fixed in relation to the rails (14) and in operative relation to the front edge of the flexible cover material (12), as shown in Figures 2 and 4.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add an adjustable tension control assembly to the cover system of Downey, as

Art Unit: 3612

modified, such that the tension control assembly is fixed in relation to the rails of Downey, as modified, and in operative relation to the front edge of the flexible cover of Downey, as modified, as taught by Schmeichel, to allow the user to obtain the desired amount of tightness when the flexible cover is placed in the closed position.

*Allowable Subject Matter*

11. Claims 9, 11, 12, and 16-18 are allowed.

*Response to Arguments*

12. Applicant's arguments filed 8/24/2007 have been fully considered but they are not persuasive. The applicant has argued against Downey with respect to the sliding of the extrusions. First, several claims only require one stop with then reads on Downey when the slats are being slid into position. Second, the claims and Downey both specify that the slats are substantially the same length as the channels. Third, the corner pieces of Downey stop "substantial longitudinal movement of the extrusion." This implies that small movements in the longitudinal direction are permitted. Fourth, the claims do not require the limitation that the cover is fastened along the entire perimeter and thus the cover of Downey does not need to be able to slide when the cover is fastened along the entire perimeter. The cover can slide substantially when attached to only the left and right rails when the rear end caps are not in place. This anticipates the claimed invention.

*Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the



Art Unit: 3612

mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Blankenship whose telephone number is 571-272-6656. The examiner can normally be reached on 7-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gab

October 2, 2007

GAB 10/2/07

  
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